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Supreme Court, U.S.
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No. 86-_____

In The

Supreme Court Of The United States

OCTOBER TERM, 1986

GLADYS HOBSON,
Petitioner,

v.

STATE OF CONNECTICUT,
Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF CONNECTICUT

MEMORANDUM OPPOSING CERTIORARI

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EDITOR'S NOTE

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QUESTION PRESENTED

DID THE CONNECTICUT APPELLATE COURT PROPERLY CONCLUDE THAT BASED UPON THE TOTALITY OF CIRCUMSTANCES PRESENTED IN THIS CASE, THE ADMISSION OF ILLEGALLY SEIZED EVIDENCE CONSTITUTED HARMLESS ERROR?

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STATUTES AND RULES INVOLVED

RULE 17.1

Revised Rules of the Supreme Court of the
United States

Considerations Governing Review on Certiorari

1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or had decided a federal question in a way in conflict with a state court of last resort; or has so far departed

from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

STATEMENT OF THE CASE

After trial by jury, the petitioner, Gladys Hobson, was convicted of larceny in the third degree, Connecticut General Statutes §§ 53a-119(8) and 53a-124(a).^{*1}

Based upon the evidence produced at trial, the trial court could have reasonably concluded the following: pursuant to a duly authorized warrant,

1 General Statutes § 53a-119(8) provides in pertinent part: "A person is guilty of larceny by receiving stolen property if he receives, retains, or disposes of stolen property knowing that it has probably been stolen or believing that it has probably been stolen, unless the property is received, retained or disposed of with purpose to restore it to the owner."

General Statutes § 53a-124(a) provides in pertinent part: "A person is guilty of larceny in the third degree when he commits larceny as defined in section 53a-119 and: (1) The value of the property or service exceeds one thousand dollars."

the petitioner's home was searched for evidence of drugs and drug paraphernalia. At the time of the search, the officers had reason to believe that the petitioner's adult son was engaged in the sale of drugs.

While executing the warrant, investigating officers noticed an unusually high quantity and diversity of consumer goods, many with sale tags still attached. The large volume of merchandise led the officers to believe that at least some of the articles were stolen. They recorded the serial numbers of some items, including a gun and television set. Subsequently, the officers secured a second warrant authorizing the seizure of those two latter items.

During the course of executing the second warrant, investigating officers

seized approximately 148 items, including the specified gun and television set. The Connecticut Appellate Court concluded that four of the items taken during that search were discovered during a limited exploratory or general search and consequently should have been suppressed. All other items were properly seized. The Court nevertheless concluded that the trial court's failure to suppress those four items was harmless error.

REASONS FOR DENYING THE WRIT

The Connecticut Appellate Court Did Not Resolve The Petitioner's Claims In A Manner Which Conflicted With Applicable Decisions Of This Court

The petitioner offers this Court an essentially factual question which has been resolved in favor of the State by the courts below. The sole question presented is whether the admission of

four illegally seized items constituted harmless error.

This Court noted in Rose v. Clark,
___ U.S. ___, 106 S. Ct. 3101 (1986):

[if]the defendant had counsel and was tried by an impartial adjudicator, there is a strong presumption that any [] errors that may have occurred are subject to harmless error analysis. The thrust of the many constitutional rules governing the conduct of criminal trials is to ensure that those trials lead to fair and correct judgments. Where a reviewing court can find that the record developed at trial establishes guilt beyond a reasonable doubt, the interest in fairness has been satisfied and the judgment should be affirmed. As we have repeatedly stated, "the Constitution entitles a criminal defendant to a fair trial, not a perfect one."

Rose v. Clark, 106 S. Ct. at 3106-7 (citations omitted).

The petitioner recognizes the applicability of the Rose v. Clark doctrine, but argues that an error in

admitting plainly relevant evidence which possibly influenced the jury adversely to a litigant can never be conceived of as harmless. (Petition at 14-15). This misstatement of the law ignores a reviewing court's obligation to consider "the entire record prior to reversing a conviction for constitutional errors that may be harmless." United States v. Hastings, 461 U.S. 499, 509, n.7, 103 S. Ct. 1974, 1981, n.7 (1983). Review of the entire record supports the Connecticut Appellate Court's conclusion.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

STATE OF CONNECTICUT

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